

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2973 OF 2006

Sujata Rajendra Nikalje Applicant

versus

State of Maharashtra Respondent

Shri Shrish Gupte, Sr.Counsel with Shri Satish Maneshinde for applicant.

Shri S.R.Borulkar, P.P. with Shri S.S.Pednekar, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT : 19.08.2006

DATE OF PRONOUNCING THE JUDGEMENT : 13.09.2006

PC :

1. Heard Shri Gupte - learned senior counsel for the applicant and Shri Borulkar - learned Public Prosecutor for the State.;

2. The applicant prays that she be enlarged on bail in MCOC Special Case No.8 of 2006.

3. Shri Gupte submits that the applicant is

arrested on 14th December 2005 in connection with CR No.150 of 2005 alleging offences under sections 3(1)(ii), 3(2), 3(4), 3(5) of MCOC Act and 384, 387, 504, 506(ii) read with 120(B) of IPC and Section 3 R/W 25 R/W 35 of the Arms Act, 1959. On 27th December 2005 the applicant filed a bail application before the learned Special Judge, Mumbai. By his order dated 9th January 2006 the learned Special Judge rejected the bail application of the applicant. On 27th March 2006 charge sheet came to be filed.

4. On 15th April 2006 the applicant filed another bail application before the Special Judge for MCOCA (Maharashtra Control of Organised Crime Act, 1999). On 27th July 2006 learned Special Judge, MCOCA rejected this bail application of the applicant and hence the applicant is before me.

5. Shri Gupte's submission is that the applicant resides at the abovementioned address along with three daughters. She is engaged in the business of construction and development of properties and operates in the name and style of M/s.Khushi Developers Pvt.Ltd.. She is married to one Rajendra Nikalje, allegedly wanted by Mumbai

Police in the aforesaid offences. Her husband has been leaving away from her for last fifteen years. She leaves on her own and earns her own livelihood. She is unconnected with any activities of her husband. There is no case registered against her till date, except for this present special case and she is an income tax assessee and a tax payer. Her arrest, therefore, is unwarranted and unnecessary.

6. He further submits that the CR is registered on 10th December 2005. However, the first incident is of January 2004. The allegation is that her husband demanded/asked for Rs.5.00 lakh and that amount was paid to her. But the complaint is after a year and a half. The applicant had no knowledge of this alleged act of her husband. Therefore, according to Shri Gupte, an inference cannot be drawn that she was abetting the organized crime syndicate of her husband. Shri Gupte submits that the case is based upon a statement of co-accused Rakesh Surve. He invited my attention to the statement and contended that a careful perusal of the statement/ confession, which is retracted subsequently, would reveal that it is not a confession at all. It does not attract relevant provisions of MCOC Act. There

is no admission of guilt. He submits that by its nature a confession is an admission of an act which would amount to an offence but the statement of Surve is not in this category. Hence, no reliance can be placed upon this statement.

7. The next contention of Shri Gupte is that other statement of one Dudani (Chartered Accountant) is also nothing but a statement/confession of co-accused. That is also retracted. Thus, these confessions, if at all they can be said to be confessions, are of co-accused which have been retracted subsequently. These are a very weak piece of evidence. In this behalf, he relies upon Section 10 of the Indian Evidence Act, 1872.

8. According to Shri Gupte third circumstance is a telephonic conversation between the applicant and her husband. He invites my attention to this conversation and submits that it is a normal and natural conversation between the husband and wife and from the same no inference can be drawn of any organised crime. He has also invited my attention to the statements attributed to the applicant and submits that there are no threats

administered to the office bearers of any co-operative society and all that is emphasised is the quality of work so also economical services to be provided once the applicant is engaged as a Developer. The meetings of the General Body of co-operative housing societies will demonstrate that there is no threat at all.

9. Shri Gupte then submits that the fourth circumstance which is referred is statement of P.W.26. That is also not enough for proving the charges under MCOC Act. He submits that some persons have handed over cheques for which, in return, the applicant has handed over cash amount. He submits that statement of P.W.102 at page 433 would not be enough inasmuch it does not name the applicant. There is no firm/company of the applicant and her husband. Her activities are normal commercial and business ventures.

10. For all these reasons, Shri Gupte submits that the impugned judgement denying bail to the applicant is erroneous and deserves to be set aside. In any event, the ingredients of Section 3(2) of the MCOC Act are not satisfied in this case. There is no conspiracy and, therefore, sub sections of Section 3 of MCOC Act are also not

attracted. That being the position, the prohibition contained in Section 21(4) would also not be attracted. Consequently, the applicant deserves to be enlarged on bail. In support of his submissions, he relies upon a decision of Supreme Court report in 2005(5)- SCC-294 (Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and another)

11. On the other hand, Shri Borulkar - learned Public Prosecutor submitted that there is no substance in this application. The learned Judge of the Trial Court was absolutely justified and right in law in rejecting the application. He submits that these very contentions were urged before him and relying upon the statements of some of the witnesses, the learned Judge has concluded that a strong prima facie case exists against applicant. Hence, the bail application was rightly dismissed and that approach is not at all demonstrated to be erroneous or illegal.

12. Even otherwise, according to Shri Borulkar, this is not the stage where a detailed inquiry is warranted and rather not permissible. From the statements of witnesses and more particularly P.W.22, 24, 25, 28 and 30 it is clear that the

applicant is a partner in the crime. She is not an innocent house wife who is merely following the commands of her husband. In other words, neither is she a victim nor an ignorant, innocent lady. She is very much part of the organised crime syndicate. Her activities are in the nature of "continuing unlawful activities" in such capacity. Therefore, Section 21(4) of MCOC Act is attracted and the application deserves to be dismissed. Shri Borulkar has emphasised the object of MCOC Act and submitted that the applicant and the co-director of the company Shri A. Sawant are part and parcel and active members of the organised crime syndicate controlled by Rajan Nikalje @ Chhota Rajan. He submits that being aware of and actively associated with the syndicate, applicant has conducted and also taken part in several unlawful activities. In this behalf, he relies upon the statement of P.W.93 which shows the process of introduction to and recruitment in the syndicate as also participation in the activities of the organised crime syndicate. He has also relied upon the statement of one Kalbhor at Volume-I, Pages 443, 449 and 441. Thus, huge monetary transactions in ill gotten money being there, ingredients of Section 3(5) of MCOC Act are applicable. In

these circumstances and coupled with the confession of the co-accused, there are reasonable grounds to believe that the applicant is guilty of the offences under MCOC Act and there is every likelihood of her indulging in similar offences in future. In this behalf her background is crucial. She is fully aware and has complete knowledge of the activities of her husband, and, therefore, the findings of learned Judge at this prima facie stage, in this behalf, are also well founded. For all these reasons, the bail application be dismissed.

13. This is an application for bail in a case arising out of MCOC Act, 1999. This is an act to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto. The Statement of Objects and reasons would demonstrate that existing legal frame work was found to be inadequate to curb or control the menace of organised crime. In these circumstances, MCOC Act came to be enacted. Therefore, the application will have to be scrutinized in the light of the provisions in such an enactment and more particularly applying

Section 21(4) of the same. A bare perusal of Section 21(4) would demonstrate that no person accused of an offence under MCOC Act shall, if in custody, be released on bail or on his own bond, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

14. Thus, the application has to be scrutinized in the above backdrop. At the outset, it is necessary to state that at this prima facie stage it is not necessary for me to go into great details and probe the materials as if the matter is being tried by me. I cannot hold a mini trial. So also, all observations made are only for the purpose of disposal of the application before me, that is application for bail.

15. One thing that needs to be emphasised at this stage is that the Court must avoid making any general observations, comments and remarks at a prima facie stage, lest, they prejudice the case of parties at trial. The attention of the learned Judge and all concerned is invited to a judgement of Hon'ble Supreme Court reported in AIR-1964-SC-703 (The State of U.P. Vs. Mohammad

Naim).

16. So also the Supreme Court has time and again cautioned all concerned that making sweeping remarks and general observations at the stage of consideration of application for bail would prejudice the case of both sides and should be avoided. In this behalf a reference can usefully be made to a decision of Supreme Court reported in AIR-1980-SC-785 (Niranjan Singh Vs. Prabhakar R. Arote and others). In para 3 this is what is observed :-

"3.

Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself."

17. In my view, the learned Judge would have been well advised and not made the observations which are made by him in paras 14 and 15 of his Judgement. At this prima facie stage, neither the learned Judge was called upon nor was it necessary for him to comment upon the role of a

wife of dreaded or dangerous person or a gangster. It must be observed at this stage itself that use of words such as "gangster's wife" should be avoided. It is quite likely that the learned Judge may be trying this case finally as well. Therefore, the role of a wife and family members of criminals is something which was not necessary to be elaborated in details at this stage. I hope that this note of caution would suffice and all concerned would guard against making comments which may not be necessary and relevant.

18. In AIR-1964-SC-703 (The State of U.P. Vs. Mohammad Naim), in para 10, the Supreme Court observes thus:-

"10.

If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made."

19. As far as materials which are referred to by the prosecution at this stage, are concerned, in my view, there is substance in the contentions of Shri Borulkar that a perusal thereof would demonstrate that a strong prima facie case is made out against the applicant. In this behalf the FIR in C.R.No.150 of 2005 registered at Tilak Nagar Police Station which alleges offence punishable under sections 3(1)(ii), 3(2), 3(4), 3(5) of MCOC Act and 384, 387, 504, 506(ii) read with 120(B) of IPC and Section 3 R/W 25 R/W 35 of the Arms Act, 1959 reveals that the complainant has not disclosed his identity. The word "Informant" and "Complainant" are being used in this case to convey the same meaning. However, he is a builder and he has come forward and alleged that he received a phone call on his mobile some time in January 2004. The caller was speaking from abroad. The person from the other end, after disclosing his name, threatened the complainant by pointing out that the caller belongs to and is a part of Chhota Rajan Gang. The builder/developer is developing a property at Chembur, Mumbai and the caller threatens him that in Tilak Nagar area, if he wants to do any

construction activity, then the gang needs to be paid Rs.10.00 lakh and if this amount is not paid, then they will kill him and not allow him to work also.

20. The complainant states that he could not assure anything about payment, but told the caller that he would take up the matter with his boss and see if something can be done.

21. Thereafter, the complainant took up the matter with his boss whereupon his boss told him that the caller Bharat Nepali is a dreaded criminal and belongs to Chhota Rajan gang and it is quite likely that he will cause harm to them personally. Hence, the complainant was informed by his boss not to take the call lightly and if the caller calls again, the boss told the complainant that he must inform him that we are willing to pay the amount demanded.

22. Thereafter, another phone call came and the complainant alleges that after it was agreed that the sum will be paid, the caller gave details of the person who will come and collect the sum on behalf of the gang from the complainant. The complaint proceeds to state that one Abu Sawant

thereafter came to the office of the builder/developer i.e. the complainant and demanded the sum. Thereafter, Abu Sawant took the complainant along with him to the residential premises of Chhota Rajan i.e. the place where the present applicant is residing. After the applicant was introduced by Abu Sawant to the complainant, a sum of Rs.5.00 lakh was handed over by the complainant to the applicant. Thereafter, the complainant and Abu Sawant left the place. The complainant further states that Abu Sawant thereafter called up Chhota Rajan on mobile and informed him that his wife was paid Rs.5.00 lakh on that date. The complainant thus states that the caller as well as Chhota Rajan are dreaded criminals and have been threatening and harassing the builders and developers in the area and extorting huge sums from them. The complainant thereafter alleges that another member of the gang Suresh Shinde @ Laxman came to the office of the complainant and demanded Rs.20.00 lakh. Since the complainant was not in a position to pay this much amount and so also fearing more threats, that he came forward and complained to the Police Station. The complainant has identified the applicant, Abu Sawant and Suresh Shinde.

23. Reliance is also placed upon a statement of P.W.22. The deponent has pointed out that he is a member of one of the co-operative societies of persons residing in old and dilapidated tenements. These persons organized themselves into a society and decided to reconstruct/redevelop the old structures. They passed a resolution at a General Body Meeting and nominated one builder/ developer for this project. However, that developer/builder after some time came and told them that he will not be in a position to undertake the project. The sudden refusal by him was surprising. Thereafter, in a General Body Meeting in October 2005 the members decided to hand over the project to M/s.Khushi Developers which is the firm/company of the applicant. After the said resolution was passed the office bearers of the society went to the office of M/s.Khushi Developers and met one Paradkar. Said Shri Paradkar told them that the society should convene a General Body Meeting and which would be attended by the officers of M/s.Khushi Developers. Accordingly, a meeting was convened some time in December 2005. The applicant, Shri Sawant and Shri Paradkar represented M/s.Khushi

Developers. In that meeting, the society requested M/s.Khushi Developers to complete the project on the same lines and on the same terms as the earlier developer had accepted. However, the applicant refused to abide by the earlier terms and in a threatening voice stated that the work will have to be awarded to M/s.Khushi Developers. The members of the society should go and visit Subhash Nagar and see for themselves the benefits those people are getting and such benefits would be given to their society. The complainant states that after these utterances of the applicant, all those attending the meeting, out of fear, did not say anything and further stated that they will think and communicate later on. To the similar effect is the statement of P.W.25 and P.W.26. P.W.28, P.W.30 also have given similar statements.

24. P.W.93 is an unknown witness who has deposed about how he came in contact with the gang of Chhota Rajan. He wanted to join the gang of Chhota Rajan. Since he was interested in doing so, he spoke to Chhota Rajan and Chhota Rajan who is known as Nana in the circles, told him to approach the applicant. The applicant was thereafter approached by this person and he

expressed his desire to work for Chhota Rajan gang. Chhota Rajan thereafter talked to him and he was recruited in the gang. Thus, for being recruited in the gang, he approached the applicant and through her he could get in touch with and talk to Chhota Rajan. One of the witness P.W.102 is supposed to have handed over sum of Rs.5.00 lakh to Santosh Sawant in September 2005. The statement is that a cash amount was handed over and later on a cheque of the said amount was also given and the cheque has been handed over to M/s.Khushi Developers.

25. Another statement relied upon is that of Shri Dudani. This Dudani is Chartered Accountant by profession. However, he has handled various transactions for the applicant's firm as also for Chhota Rajan. It is alleged that he has visited Australia on the instructions of Chhota Rajan. It is alleged that all such instructions of Chhota Rajan were given to him by the applicant and other members of the Chhota Rajan gang.

26. It is not disputed before me that several cases are pending against Chhota Rajan and he is desperately wanted by Mumbai Police. However, for quite some years he has been staying abroad.

Prima facie, the activities and operations of Chhota Rajan in India are continuing and the attempt of the prosecution is that they are so continuing with the active assistance and participation of applicant and other members.

27. In this context the statement of Shashank Prabhakar Kalbhor working as Police Sub Inspector and posted at Economic Offences Wing is crucial. He states that during the course of investigation on 16th December 2005 a search was conducted at the office premises of Bharat Dudani, Chartered Account of the applicant, her relatives and her office. Total 14 files were seized under Panchanama. After scrutiny of these files the said Kalbhor collected certified copies of various documents referred to in his statement and a scrutiny revealed that various amounts have been received in the accounts of applicant so also in the name of three daughters. The details of foreign remittances are enlisted in his statement. Shri Dudani is also an accused and during investigation it is revealed that the daughters of applicant are recipients of various amounts from the persons whose names are set out in the statement of Shri Kalbhor. The amounts were paid through Vijaykumar Mishra. The details

of the bankers, the amounts and the amounts are set out in his statement. The statement seeks to demonstrate as to how black money transactions were converted into genuine transactions.

28. From a perusal of these materials and the definition of the term "continuing unlawful activity", "organised crime", "organised crime syndicate" appearing in Section 2(1) so also the term "abet" defined in Section 2(1)(a), it is apparent that the offence of organised crime which is referred to in Section 3 and offences of conspiracy, or for being member of an organised crime syndicate so also holding any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds, are prima facie committed in this case. In other words, at this stage, it cannot be said that the applicant is not guilty of the aforesaid offences. The statements have been read out and portions thereof relied upon by both sides. When the unlawful activities of the crime syndicate which is organised by Chhota Rajan are referred to in details and the allegation is that in absence of her husband, the affairs are controlled by the applicant, she is introducing

new members and is recipient of sums which are extorted by the syndicate so also she being alleged to be a active member thereof, then, the prima facie conclusion of the learned Designated/ Special Judge cannot be faulted.

29. At this stage when it is not disputed that the applicant is wife of Chhota Rajan, it further not being disputed that she is connected with him and the activities of his group can safely be termed as "organised crime syndicate", then it is not for me to go into any further details including deciding the evidentiary value of the statements and confessions. Thus, it is not just the confessions of co-accused but other materials collected based upon which the prima facie conclusion, as above, can be reached.

30. It is not possible for me to agree with Shri Gupte, at this stage that the applicant is unconnected with the activities of the organised crime syndicate of Chhota Rajan. From the materials collected, it cannot be said prima facie, that the applicant is not a member of the Chhota Rajan Gang nor can it be said, once the activities are continuing unlawful activities, that she has not committed any offence punishable

under the aforementioned provisions of MCOC Act. If the allegations in the statements are that the applicant along with other members of the group has issued threats and extorted as well as received monies as a part of the unlawful activities of the organized crime syndicate, then such statements cannot be discarded or brushed aside. It cannot be concluded at this stage that the activities of the applicant are independent, as suggested by Shri Gupte. The development and construction activities of the company cannot be delinked at this prima facie stage from the organized crime syndicate of which the applicant is member. Whether the income of the applicant is exclusively derived from her business venture and whether it is her own or not are matters which have to be gone into at the stage of Trial. From the materials collected at this stage no final conclusion need be arrived at. The monies held are derived or obtained from the commission of an organized crime, prima facie.

31. In the above circumstances, there is much substance in the contentions of Shri Borulkar that the applicant cannot be said to be a mere follower of her husband's commands but has knowledge of the activities of the organized

crime syndicate and participated in the same. The Supreme Court in the decision relied upon by both, Shri Gupte as well as Shri Borulkar in the case of Ranjitsing Sharma Vs. State of Maharashtra, has observed that it is not necessary to weigh the evidence meticulously but to arrive at a finding on the broad probability, at this stage. Once the materials in the present case are considered in this light, then, prima facie, it is clear that they do make out a case for applying the provisions of MCOC Act. The offences are serious and punishable as stipulated therein.

32. There is substance in the contention of Shri Borulkar that the applicant does not deserve to be enlarged on bail also because of her activities and association with the organized crime syndicate. The applicant, if enlarged, is likely to indulge in similar acts. Hence, the application deserves to be dismissed. Once this conclusion is reached, then other decisions relied upon by Shri Gupte need not be referred and discussed in any details.

33. It is clarified that all observations made by me are tentative and are made for disposal of

the present application and shall not influence the Trial Judge while finally deciding the case. Application is dismissed.

(S.C.DHARMADHIKARI, J.)